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Erik J. Burckart

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SUITE 3020

BOCA RATON, FL 33487

EXAMINER

LONG, ANDREA NATAE

ART UNIT

PAPER NUMBER

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MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: ERIK J. BURCKART, JAMES PATRICK GALVIN JR.
and BRIAN L. PULITO

Application No. 10/733,658
Technology Center 2100

Mailed: 3 March 2009

Before LAWRENCE J. BANKS *Paralegal Specialist*
BANKS, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on 16 December 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith

being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, HEADINGS

A review of the file indicates that the Appeal Brief filed 7 April 2008 does not comply with 37 CFR § 41.37(c) because it does not contain all required heading items. Specifically, 37 CFR § 41.37 (c)(1) requires the following heading items in the following order:

- (i) *Real party in interest.*
- (ii) *Related appeals and interferences.*
- (iii) *Status of claims.*
- (iv) *Status of amendments.*
- (v) *Summary of claimed subject matter.*
- (vi) *Grounds of rejection to be reviewed on appeal.*
- (vii) *Argument.*
- (viii) *Claims appendix.*
- (ix) *Evidence appendix.*
- (x) *Related proceedings appendix.*

Upon an in-depth review of the Appeal Brief filed 7 April 2008 does not comply with the guidelines provided in the *Manual of Patent Examining*

Procedure (MPEP) (Eighth Edition, Rev. 3, August 2005) § 1205.02

because it does not contain the correct required heading. Specifically, the incorrect heading item on the Appeal Brief reads:

“VI. ISSUES TO BE REVIEWED ON APPEAL.”

The correct heading item should read:

“(vi) Grounds of rejection to be reviewed on appeal.”

A substitute brief that is in compliance with § 41.37(c) is required. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for details.

APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed 7 April 2008 under the heading “Grounds of rejection to be reviewed on appeal” is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action, including any mailed Advisory Action(s) finds that claims 6, 12, and 15-17 are rejected

Application No. 10/733,658

under 35 U.S.C. 103(a); whereas Appellant(s) have either not indicated the grounds of rejection of these claims or has improperly listed these claims as 15-17 are rejected under 35 U.S.C. 103(a). Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed 7 April 2008 defective;
- 2) for appellant to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;
- 3) notify Appellant to file a paper properly addressing the Grounds of rejection of all claims; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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